IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5331 OF 2005

Shri Gorakshnath Devasthan Peer Santo-
shnath Guru Mahant Dashrathnath ..Petitioner.

Versus

Dilip Pandurang Kadam ..Respondent.

Mr. V.Z. Kankaria for the Petitioner.
Mr. N.V.Walawalkar for the Respodent.

CORAM : S. A. BOBDE, J.
DATED : 14TH SEPTEMBER, 2005.

P.C.:

1. Rule returnable forthwith.

2. Mr. Walawalkar waives service of rule for the Respondent.

3. Heard by consent.

4. The Petitioner -Devasthan has challenged the interlocutory order passed by the Commissioner Pune Division, Pune in Revision bearing No. 92/2005 filed by the respondent, by which the learned Commissioner has granted stay to the respondent and thereafter extended it until further orders, while entertaining

the revision.

5. Mr. Kankaria, the learned counsel for the petitioner contended that the learned Commissioner Pune Division, Pune ought not to have granted stay in view of the respondent's conduct. According to the learned counsel, the respondent, who was ordered to be evicted by the Mamlatdar under the Bombay Tenancy and Agricultural Lands Act, 1948; instead of filing an appeal, approached the civil court. The civil court declined to interfere with the order of the Mamlatdar and thereafter, he has taken recourse to the provisions of the Bombay Tenancy and Agricultural Lands Act; hereinafter referred to as 'the Act'. Therefore, the appeal filed by the respondent under the provisions of the Act, is not tenable. Much less the Commissioner acting in lieu the MLRT was entitled to entertain the revision and grant stay.

6. There appears to be no merit in the contention of the petitioner. It is a fact that the respondent had filed a civil suit. However, according to Mr. Walawalkar, the learned counsel for the respondent, the civil court granted a decree that the respondent should not be dispossessed without due process of law, which fact is borne out by para 7 of the petition

itself. Indeed, the respondent had filed a suit in which the petitioner was restrained from dispossessing the respondent without due process of law. However, Mr. Kankaria, the learned counsel for the petitioner referred to the filing of the Regular Civil Suit No. 1/2005 which the civil court has apparently dismissed on the ground that it is not maintainable since the respondent has availed of two remedies i.e. before the civil court and also before the S.D.O.. It appears that as a result of this, the respondent filed an appeal before the S.D.O., Shirala, who dismissed his appeal by the order dated 12th May, 2005 Exh.'H'. It is against this appeal the respondent has filed a revision which has been entertained and in which stay has been granted by the learned Commissioner.

7. Having regard to the circumstances of the case, I am of view that the learned Commissioner has not committed any error of law apparent on the face of the order in granting stay. The jurisdiction of the Commissioner to entertain the revision and grant stay, is not disputed even by the learned counsel for the petitioner. The dispute between the parties is as to whether the respondent is a tenant of the petitioner -Devasthan and whether he is entitled to be in possession of the land. It is obvious that the

petitioner Devasthan had applied for possession of the land under section 29 of the Act and having regard to the circumstances, if the Commissioner has found it appropriate to entertain the revision and grant stay, it is purely an interlocutory order, which is not liable to be interfered with at this stage.

8. Mr. Kankaria, the learned counsel for the petitioner submitted that the interim order would work injustice since the Commissioner is not empowered to dispose of the revision by virtue of an order passed by the same court, which he cannot produce. In any case, whatever be the position, the Commissioner has committed no error in protecting the respondent's possession pending revision. I am of view that having regard to the circumstances of this case, it is not a fit case for vacating stay granted by the Commissioner, who has entertained the revision; since it involves the question of possession of the land in question.

9. In this view of the matter, I am not inclined to interfere. Rule is discharged.

DT.14.09.05 (S.A.BOBDE,J)

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